

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: GENERIC PHARMACEUTICALS  
PRICING ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

*ALL ACTIONS*

**MDL 2724  
16-MD-2724**

**HON. CYNTHIA M. RUFÉ**

**THE KROGER DAPS' RESPONSE TO THE COURT'S  
FEBRUARY 12, 2021 ORDER REGARDING BELLWETHER SELECTION**

The Kroger DAPs submit this Memorandum in response to the Court's February 12, 2021 Order requesting comment on a revised selection for the overarching conspiracy bellwether.

The Kroger DAPs share the view of the State AGs that the Dermatology case would be a superior bellwether to the Heritage-centric bellwether based on the criteria established by this Court. And we agree that clarity is necessary with respect to the single-drug bellwethers in the class cases in order to allow the parties to begin preparing now for briefing on class certification.

More broadly, we support the Court's decision to select multiple bellwethers, including overarching conspiracy claims and separate individual drug cases for the classes.<sup>1</sup> We also support the Court's bellwether initiative, which aligns with what we understand to be the Court's directive to the parties: (i) to proceed vigorously with fact and expert discovery as to all drugs and parties in the MDL as defined in the Stipulations and Case Management Orders entered or later entered in this MDL and subject to a pretrial schedule for the MDL with fixed and firm dates that the Court

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<sup>1</sup> The Court has indicated that in addition to an overarching conspiracy bellwether involving the State AGs, it will consider at a later time a second overarching conspiracy bellwether that includes the Kroger DAPs. *See* Sept. 10, 2020 Hrg. Tr. at 54.

may enter;<sup>2</sup> and (ii) to bring unresolvable discovery disputes promptly to the Special Masters so they do not unreasonably delay proceedings in this MDL Case.

Dated: March 1, 2021

Respectfully submitted,

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<sup>2</sup> The Court has reiterated this point at several hearings. *See* July 9, 2020 Hrg. Tr. at 39 (“in no way, shape or form does the selection of bellwether trials create a pass or an unofficial stay for any other case. Discovery is to not just commence but to be vigorously sought in as many cases as possible, in as comprehensive and consolidated a way as possible.”); *see also* Sept. 10, 2020 Hrg. Tr. at 41 (“And while we are focused on the bellwethers as being representative and hopefully helpful in whatever their resolution is to the remaining cases, we also understand that we have to process and give voice to those other cases, and why not start now.”)